

BEFORE THE STATE OF MONTANA
SUPERINTENDENT OF PUBLIC INSTRUCTION

In the matter of the Appeal of)
JAMES C. HOLTER) DECISION AND ORDER

This Appeal is by a tenure teacher, James C. Holter, in the Nashua school system who has appealed the decision of the Valley County Superintendent of Schools affirming his termination by the Board of Trustees Of Valley County School District No. 13. The Conclusions of Law issued by the Valley County Superintendent of Schools cited §20-4-203 and §20-3-204 Montana Code Annotated (hereinafter referred to as M.C.A.). That Appeal was pursuant to 520-3-210 M.C.A. This Appeal is pursuant to 520-3-107 M.C.A.

The Appellant and Respondent have submitted briefs and the case is considered submitted for decision.

The Appellant, ~~Mr~~ Holter, was an instructor in the Nashua schools for 7th grade English and science. The record reflects that in school year 1980-81, ~~Mr~~ Holter had acquired tenure by receiving his fourth contract at the Nashua schools.

The record reflects that ~~Mr~~ Holter was certified to teach K-12 health and physical education. ~~He~~ was certified to teach in no other areas, yet he did also teach junior high math, science, and English for the district. The record reflects that over the past four years since Mr. Holter was employed as a teacher, the enrollment at the Nashua school dropped from approximately 285 to 215 students. It was anticipated that further decreases in enrollment would occur. Based on the reduction in enrollment, the school district decided to institute its reduction in force policy:

The issue whether or not a reduction in force was proper in this case has not been disputed by the parties.

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The issue presented by this Appeal is whether the method of selecting Mr. Holter to be RIFFED was proper in view of state law and the reduction in force policy adopted by the Nashua Public Schools.

Since assuming office, I have adopted the standard of review for appeals set forth in the Montana Administrative Procedure Act, §2-4-704 M.C.A., which provides:

(2) The court may not substitute its judgement for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision, were not made although requested.

The Findings of Fact and Conclusions of Law and Order issued by the Valley County Superintendent are determinative of this Appeal and I set forth them in their entirety:

FINDINGS OF FACT

1. James Holter was a tenure teacher in the Nashua schools; with certification in P.E. K-12. (Joint exhibit #10)
2. Nashua schools have been experiencing declining enrollment in the last few years. The Board decided not to raise the rate of the voted mill levy. Various alternatives were considered by the administration. The decision was made that a reduction in force (RIF) was necessary for the 1981-82 school year.
3. Nashua has a RIF policy. (Joint exhibit #1)

CONCLUSIONS OF LAW

1. James Holter was counseled over a period of time on securing the additional certification needed to continue to teach classes in English and science.

2. Holter was teaching subjects that could be taught by Other members of the staff who were endorsed in specialized fields such as business, social studies, etc.
3. The Trustees acted in accordance with all statutory procedures stated in Section 20-4-203 and 204 in dismissing Appellant.

ORDER

On the basis of the foregoing Findings of Fact and Conclusions of Law, the hearing officer upholds the decisions of the Board of Trustees, School District No. 13, in the non-renewal of the contract of James Holter for the 1981-82 school year.

The School District also relied on 539-31-303 M.C.A. which provides:

Management rights of public employers. Public employees and their representatives shall recognize the prerogatives of public employers to operate and manage their affairs in such areas as, but not limited to:

- (1) direct employees;
- (2) hire, promote, transfer, assign, and retain employees;
- (3) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
- (4) maintain the efficiency of government operations;
- (5) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (6) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (7) establish the methods and processes by which work is performed.

While neither party contends that this statute impliedly repeals or amends the rights of tenure granted to teachers, I will take the opportunity to clarify that it is my position that teacher tenure is, and continues to be, a substantial, valuable and beneficial right which cannot be taken away except for good cause. State ex. rel. Saxtorph v. District Court, Fergus County, 128 Mont. 253, 275 P. 2d 209 (1954).

I also cite the recent case of Keiser v. State Board of Regents. 630 P. 2d 194 (1981) which further discussed the academic and economic reasons for tenure.

The record reflects that of the 21 1/2 certified teachers at the Nashua

schools, 14 are tenured. The exhibits to the record indicate that at the Board of Trustees meeting on March 24, 1981 approximately 17 teacher contracts were offered or teachers were rehired. There were 4 teachers not rehired, including the Appellant. Nothing in the record reflects the status of the other 3 teachers who were not rehired. Nor was there any clear evidence of findings of the method or methods for determining Mr. Holter's RIF. Nor was there any identification of a group or class of teachers which the RIF policy was applied to in the record. It is evident from the record that there were other teachers in the Nashua school system who were able, or thought able by the Board of Trustees, to assume Mr. Holter's duties. For example, upon cross examination by the attorney for the Appellant, the district admitted that a possible replacement for the Appellant was a physical education teacher who was not tenured. The record also reflects the possibility that a tenured teacher who was not certified to teach physical education would take over Mr. Holter's class. Further, the record also indicates a possibility that the replacement teacher for English would not be tenured. The brief of the school district states that "his classes can all be taught with existing staff, all of whom are superior in tenure, certification, or both to the Appellant." Unfortunately, there are not specific findings or conclusions relative to that statement as to the method applied.

In view of the longstanding legislative and judicial support for tenure, and my duty to administer the law as I find it, and further in view of there being no specific finding as to the method clearly employed by the Nashua Public Schools in selecting Mr. Holter for a RIF, particularly when his replacement for physical education would either be nontenured or noncertified, I must reverse the decision of the Valley County Superintendent of Schools. It is central to the concept of tenure that the "same or comparable positions of employment as that provided by the last executed

contract be analyzed in the record and in the Findings, Conclusions, and Order which deal with the reduction in force of a tenure teacher." This specifically refers to the grade or school in which the teacher last taught and does not mean any teaching position in which the teacher may be certified. In order for me to uphold a RIF policy in any school in Montana involving a tenured teacher, there must be strict adherence to the concept of tenure and the economic security which the term has acquired in this state. It must be affirmatively shown that the teacher to be RIFFED was selected from a pool or group and that those who are to take over the RIFFED tenure teacher's duties are not nontenure and that in all other aspects the RIF policy has been followed. The "possibility" that such may occur is not sufficient.

The fact that Mr. Holter may not have been certified to teach math, English, or science does not cover the failure of this school district to properly apply its RIF policy with proper view toward existing tenure laws. The record, the Findings of Fact and Conclusions of Law and Order are all deficient because they do not address the RIF policy or the tenure issue.

A school district, on concluding that there-is a justifiable need for RIF of a teacher position, cannot terminate a tenured teacher and retain a nontenured teacher to fill a position for which the tenured teacher was qualified. See State ex. rel. Marolt v. Independent School District No. 695, 1099 Minn. 134, 217 N.W. 2d 212 (1974). See also the discussion in 100 A.L.R. 2d 1184, which states:

In a selection of a teacher or teachers to be dismissed or suspended upon a reduction in the number of teachers employed, or upon the abolishment of a position, class, or activity and in the absence of any expressed statutory basis for such selection, it has been held that the school board cannot dismiss or suspend a tenured teacher and retain a nontenured teacher, at least where the nontenured teacher is retained to teach in the same position

or in the same general area of competence, interest, and training as the tenured teacher.

I hold that the burden of proving such a selection was properly conducted and made remains with the school district which is implementing its RIF policy. Such burden must be clearly met by the school district or I will be forced to reverse the decision in view of the longstanding legislative and judicial recognition of tenure.

The decision of the Valley County Superintendent of Schools is reversed and the Appellant, ~~Mr~~ Holter, is ordered to be reinstated.

DATED DECEMBER **30**, 1981.

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DECISION AND ORDER

This is an appeal from a decision of a Hearing Officer for the Blaine County Superintendent of Schools, rendered January 27, 1981, which affirmed the decision of School District #10, of Blaine County, that it was not responsible for the tuition of R.H., a handicapped child, with visual perception problems, who is a slow learner. The decision also provided that the Department of Public Welfare of Blaine County was responsible for the tuition of the child, who is attending School at the Intermountain Deaconess Home in Helena. Both the Blaine County Department of Public Welfare and the Department of Social and Rehabilitation Services have appealed that decision.

This appeal was noticed for submission to the Superintendent and the time for submission of briefs, arguments and requesting oral argument has expired.

I believe two issues are presented on the appeal:

1. Whether the Hearing Officer properly determined that School District #10, of Blaine County was not responsible for the tuition of R.H.
2. Whether the Hearing Officer properly determined that the Department of Public Welfare of Blaine County was responsible for the tuition of R.H. at the Helena School.